

Appl. No. 10/780,935
Amdt. dated March 2, 2005
Reply to Office action of January 18, 2005

REMARKS/ARGUMENTS

Claims 1-19 are presently pending in the application as amended through the amendment filed November 10, 2004.

In this amendment, Claims 1, 4, 5, 7, 15 and 18 have been amended.

Claims 3 and 6 have been canceled without prejudice to filing a continuation with respect thereto.

Claim 20 has been added.

Claims 2, 8-14, 16, 17 and 19 remain unchanged.

In accordance with the new rules, all the claims are shown above, and the amended claims are shown in a redlined format. The amendment to the specification is made by replacing the paragraph with the paragraph set forth above. As set forth below, the amendments to the Claims are believed to place the Claims in condition for allowance.

This amendment is set forth to comply with the Examiner's requirements and to place the application in condition for allowance or for better consideration on appeal. The amendment is thus believed to comply with the requirements of 37 C.F.R. §116. Entry of the amendment, reconsideration of the application, and issuance of a notice of allowance are respectfully requested.

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In the present office action, the Examiner rejected Claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over Chamoulaud (FR 2768018) in view of Greenberg (US 5910514) and Gidge (US 38701583).

The Examiner supplied only an English language abstract for the French patent. Applicant has obtained a translation of the patent using an on-line translation program. A copy of the translation obtained from the on-line translation program is attached hereto. As can be seen from the translation, FR 2768018 is directed to a mat arrangement having a biodegradable base material to which fragments of material are applied. The fragments are adhered to the biodegradable base material by impregnating the fragments with an adhesive. From the translation obtained, it appears that the fragments are adhered to the base material at the site of use. That is, the consumer is supplied with the base material and the adhesive impregnated fragments of material. At the site of use, the consumer cuts the base material to the desired size and shape, and the adhesive impregnated fragments are laid over the base material. The fragments are then adhered to the base at the site of use. Chamoulaud does not appear to be clear as to how the adhesive is activated to adhere the adhesive impregnated fragments to the base material.

Thus, Applicant respectfully asserts that the French patent does not disclose a rollable mulch carpet, as provided by Applicant. As noted, the Chamoulaud does not appear to disclose that the mulch carpet is supplied to the user or consumer as a mulch

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carpet, but rather that the fragments are adhered to the base at the site of use. In addition, Applicant notes that Chamoulaud discloses that the base material to which the fragments are adhered is a biodegradable base. The use of a biodegradable base is disadvantageous inasmuch as over a short period of time, the base will disintegrate, and the mulch material will no longer be adhered to any base. The mulch material can then be moved about by rain, wind, etc. and will have to be continuously moved back into place, such as by raking. An alternative would be to remove all the material and then apply a new base material to the site, position fragments over the base material, and adhere the fragments to the base material with the adhesive impregnated in the fragments.

Applicant's mulch carpet solves the shortcomings of the Chamoulaud mulch carpet by providing that both the base material and the mulch are non-biodegradable. This is inherent from the fact that they are made from a plastic or rubber material. Additionally, as noted at page 6 of the application, the base material "can be made of virtually any type of material that resists degradation in normal weather environments ...". Thus, the artificial mulch material of Applicant's mulch carpet will stay adhered to the base material over many seasons. Because Applicant's mulch material will remain adhered to the base material, Applicant's mulch carpet can be hosed down or even power washed to clean the carpet of dirt, leaves, etc. without displacing the mulch material. Further, Applicant's mulch carpet can be lifted and moved, if desired. These advantages are not present in a system,

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such as provided by Chamoulaud, wherein the base material disintegrates. Further, Applicant's mulch carpet is provided in a completed form (i.e., as a rollable mulch carpet), and the consumer need not do anything other than cut the carpet to a desired size and shape.

To make Applicant's invention clearer, Claim 1 has been amended to provide that the base material is made from a non-biodegradable material; that the artificial mulch-like material is "made substantially from the same material as said base material"; and that the mulch material is "bonded" to the base material "by chemical or heat". The fact that the base material is non-biodegradable is apparent from the application at page 6 as just noted above. The fact that the base material and mulch material are made from the same material was found in original Claim 5. Lastly, original Claim 6 provided that the mulch material be "bonded" to the base material "by chemical or heat". Hence, the amendments to Claim 1 do not add new matter or new issues to the application.

The Examiner asserts that Gidge and Greenberg both teach or suggest that the base material and mulch material be formed from the same material. Applicant respectfully disagrees. In making this assertion, the Examiner points to Gidge, Col. 3, lines 35-40 and to Greenberg, Col. 1, lines 61-63. Gidge, at Col. 3, lines 35-40, states:

"The backing layer 43 may be economically formed of waste natural, mineral or synthetic fibres, such as nylon, steel wool, or the like and when unified into sheet, or thin mat, configuration with a resin binder has

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considerable tensile strength, and resistance to tearing, for supplying strength to carpet 20."

Greenberg, at Col. 1, lines 61-63 states "One such mulch is made from plastic materials, such as thermoplastics which are typically used to form hard plastic objects such as milk jugs, boat hulls, and pipes."

Thus, while Gidge discloses the base material can be made from a plastic and Greenberg discloses that the mulch material can be made from a thermoplastic, neither Gidge nor Greenberg, disclose that *both* the base and the mulch be made from the substantially the same material, as now set forth in Claim 1. In fact, Gidge teaches away from the invention as currently claimed. Gidge provides that the mulch material is natural, as discussed in the previously filed Amendment A (see page 10 thereof). Greenberg only discloses a method of making a synthetic mulch. Hence, Greenberg does not teach or suggest the type of backing to which the mulch can or should be applied. Because Gidge teaches away from the invention as claimed, Gidge cannot be combined with Chamoulaud to make the claimed invention obvious. MPEP §2145.X.D.1 ("A prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness;") and §2145X.D.2 ("It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)")

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The Examiner asserts that Chamoulaud #3 and that Gidge Col. 3, lines 1-45 disclose bonding by heat or chemical. Chamoulaud #3 is an adhesive with which the mulch material is to be impregnated. Chamoulaud does not disclose how the adhesive operates to adhere the mulch to the base material. It is noted that Chamoulaud does not teach or suggest that the mulch material be "bonded" to the base material. Further, Chamoulaud does not disclose the use of heat treatment or chemical treatment to bond the mulch material to the base material. Gidge, as noted above, and as discussed in the prior amendment, encapsulates the natural mulch in an adhesive to glue the mulch to the base material. Hence, Gidge does not teach or suggest that the mulch material be "bonded" to the base material. Thus, neither Chamoulaud nor Gidge teach or suggest bonding of the mulch material to the base material by chemical or heat, as is now set forth in Claim 1.

For at least the foregoing reasons, none of the references, whether considered individually or in combination, teach or suggest the invention of Claim 1. None teach or suggest that the base material and the mulch material be formed from substantially the same material. While Gidge and possibly Chamoulaud teach gluing of the mulch material to the base material, neither teaches nor suggests bonding of the mulch material to the base material by heat or by chemical. Hence, Claim 1 as currently presented is believed to be in condition for allowance.

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Claims 2, 5 and 7-14 depend from Claim 1 and are also believed to be in condition for allowance.

The Examiner rejected Claims 15-19 under 35 U.S.C. §103 over Chamoulaud in view of Greenberg. Claim 15 has been amended to provide the method for making the rollable mulch carpet of Claim 1. Thus, Claim 15, as now amended, provides that the mulch-like material is "made of substantially the same material as the base material" and for a step of "bonding" the mulch-like material to the base material. As discussed above, none of the applied references teach or suggest that both the base material and mulch-like material be formed from substantially the same material or that the mulch-like material be bonded to the base material, as now set forth in Claim 15. Hence, Claim 15 is believed to be in condition for allowance.

Further, Claim 18 has been amended to provide that the step of bonding the mulch-like material to the base material "is performed either by the application of heat or by chemically bonding the mulch material to the base material". Again, as discussed above, none of the references applied teach or suggest bonding the mulch material to the base material by chemical or heat action. They only teach adhering the mulch material to the base material by means of glue or adhesive.

Thus, Applicant respectfully asserts that none of the references whether considered individually or in combination teach or suggest the subject matter of Claim 15. Hence,

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Claim 15, and the claims that depend therefrom, are believed to be allowable. Additionally, Claim 18 is believed to be allowable independently from Claim 15.

New Claim 20 has been added. Claim 20 is directed to a method of producing a rollable mulch carpet comprising the steps of: (1) "providing a base material that is generally flexible and substantially porous and having an upper surface;" (2) applying a layer of adhesive over the base material;" and (3) "placing a layer of mulch-like material over the adhesive to adhere the mulch-like material to the base material such that an upper portion of the mulch-like material is exposed; the mulch-like material being made from a weather resistant material that is one of either shredded rubber tires or plastic."

None of the references teach or suggest the method of Claim 20. In particular, none of the references applied teach the application of a layer of adhesive to the base material and then placing the mulch-like material over the adhesive "such that an upper portion of the mulch-like material is exposed". Gidge, as noted encapsulates that mulch in adhesive; and Chamoulaud impregnates the mulch material with an adhesive and then somehow activates the adhesive. Neither teach nor suggest a method as set forth in Claim 20. Claim 20 is thus believed to be in condition for allowance.

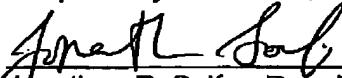
Claim 4 has been amended to depend from Claim 20 and is thus also believed to be allowable.

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In view of the foregoing, Claims 1, 2, 4, 5 and 7-20 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

Dated: 3/2/05

Respectfully Submitted,



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